

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL ZAK,

Plaintiff,

-v-

FIVE TIER, INC.,

Defendant.

CIVIL ACTION NO.: 20 Civ. 9375 (GBD) (SLC)

ORDER

SARAH L. CAVE, United States Magistrate Judge.

The Honorable George B. Daniels has referred this matter to me for general pretrial supervision and to address the matters raised in Plaintiff's letter dated May 24, 2022 (the "Letter"). (ECF No. 15). On June 13, 2022, the Court held a telephonic conference to discuss the issues outlined in the Letter. Defendant Five Tier Inc. ("Five Tier") failed to appear. (ECF min. entry June 13, 2022). At the Telephone Conference, Plaintiff's counsel reported that Five Tier has defaulted on the settlement agreement. That same day, the Court ordered Plaintiff to serve on Five Tier a copy of Judge Daniels' Order Approving the Settlement Agreement (ECF No. 12), the Letter (ECF No. 14), the Court's Telephone Conference Scheduling Order (ECF No. 16), and a copy of the post-conference order (collectively, the "Documents"). (ECF No. 17). On June 27, 2022, Plaintiff filed proof of service of the Documents. (ECF No. 18). Again, Five Tier failed to appear. On July 11, 2022, the Court directed Five Tier to show cause by Friday, July 22, 2022, why (i) it failed, without explanation, to appear at the Telephone Conference, (ii) it has failed to honor the settlement agreement reached by the parties, and (iii) the Court should not direct that

Certificates of Default be entered against it for its failure to continue to appear and defend in this action. (ECF No. 20 (the “OTSC”)). The Court cautioned Five Tier “that its failure to respond to this Order will result in the Court directing the Clerk of Court to enter certificates of default and permitting Plaintiff to move for default judgment.” (Id. (citing Fed. R. Civ. P. 55)). On July 22, 2022, Plaintiff filed a letter-motion seeking an extension to file the OTSC on Five Tier. (ECF No. 21 (the “Letter-Motion”)). On July 25, 2022, the Court granted the Letter-Motion, and directed (i) Plaintiff file a copy of the OTSC on Five Tier by July 29, 2022, and (ii) Five Tier respond to the OTSC by August 5, 2022. (ECF No. 22). On July 26, 2022, Plaintiff filed the OTSC on Defendant. (ECF No. 23). To date, Five Tier has failed to respond, or otherwise, appear in the case.

Accordingly, the Court orders as follows:

1. By **Monday, August 22, 2022**, Plaintiff shall serve on Five Tier a copy of **this Order**;
2. By **Friday, August 26, 2022**, Plaintiff shall request a certificate of default as to Five Tier from the Clerk of Court, in accordance with Fed. R. Civ. P. 55 and S.D.N.Y. Local Rule 55.1; and
3. By **Friday, September 9, 2022**, Plaintiff shall file a motion for default judgment in accordance with the Individual Practices of the Honorable George B. Daniels, Rule 55 of the Federal Rules of Civil Procedure, and S.D.N.Y. Local Rule 55.

Dated: New York, New York
 August 18, 2022

SO ORDERED.


SARAH L. CAVE
United States Magistrate Judge